

# **EXHIBIT 36**

Notice of Motion to Amend Bill of Complaint  
and related documents, October 24, 1931

Filed \_\_\_\_\_ 1930 IN EQUITY  
 \_\_\_\_\_ Clerk No. C-125  
 By \_\_\_\_\_ Deputy  
 \_\_\_\_\_  
 COLE L. HARWOOD  
 Solicitor for the Plaintiff  
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IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE  
 DISTRICT OF NEVADA.  
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UNITED STATES OF AMERICA, )  
 )  
 Plaintiff, )  
 )  
 -vs- )  
 )  
 WALKER RIVER IRRIGATION DISTRICT, )  
 a corporation, et al, )  
 )  
 Defendants. )

NOTICE OF MOTION TO AMEND BILL OF COMPLAINT.

SIRS:

PLEASE TAKE NOTICE that upon the affidavits of E. W. KRONQUIST, verified October 22, 1930; GEORGE SPRINGMEYER, verified October 23, 1930; and COLE L. HARWOOD, verified October 23, 1930, and upon all of the pleadings, records and files in this case, and also upon the testimony taken before the Special Master heretofore appointed herein, the plaintiff will move the Court at the Court Room of the United States District Court in the United States Building in Carson City, Nevada, at the opening of the Court on Monday, November 3, 1930, or as soon thereafter as counsel can be heard, for an order permitting the plaintiff to amend the Amended Bill of Complaint filed herein March 19, 1926, in the following respects:

1. To amend and change Paragraph III of the Amended

1 Bill of Complaint by striking out the words:

2 "150 cubic feet per second of time"

3 in the third line on Page 9 of the printed copy of said Amended

4 Bill of Complaint, and substituting therefor:

5 "4<sup>1</sup>/<sub>8</sub> feet per acre, measured at the point of  
6 diversion from the river for each acre of land  
7 irrigated during the irrigation season, beginning  
8 on or about the 15th day of March and extending  
9 to and including the 15th day of September in each  
10 year; also a constant flow of not less than one  
second foot in each of the main canals on said  
reservation now constructed or hereafter to be con-  
structed, measured at a point at or near the end of  
each said main canal, for stock watering and domestic  
purposes."

11 2. To amend and change the said Amended Bill of Com-  
12 plaint by adding to Paragraph VI thereof, the following:

13 "Provided, however, that the plaintiff does not  
14 recognize as effective or binding, or for any pur-  
15 pose the said Decree in Equity #731 so far as it ad-  
16 judicates or attempts to adjudicate or grant a water  
17 right to any person for or appurtenant to, or for use  
18 upon lands that were not in the year 1905 actually  
19 irrigated (that being the date fixed in the said de-  
20 cree for the adjudication of the rights described  
21 therein), and/or in any case where, on account of  
22 lapse of time, abandonment or non-use, the parties  
23 to said suit or their successors have lost the water  
24 right granted or adjudicated by said Decree #731.  
25 The complainant alleges that the said Decree #731  
26 attempts to adjudicate and grant water rights for  
many thousands of acres of land that were not in  
the year 1905 irrigated, and that were not entitled  
to a water right. The complainant further alleges,  
according to its information and belief, that in some  
cases the water right adjudicated or granted by said  
decree in Equity #731, has been abandoned or lost by  
non-use or intentional abandonment since the making  
of said decree. The defendants should therefore be  
required to set up and establish the acreages actually  
irrigated by them and entitled to a water right in  
the year 1905, and such rights as they claim to have  
severally acquired since that date."

27 "Provided further, that the plaintiff does not  
28 recognize as effective or binding the said decree in  
29 Equity #731 so far as the duty or use of water is  
30 concerned, for the reason that said decree in Equity  
#731 does not fix any period of time when the amount  
of water expressed in cubic feet per second may be  
used by the several parties to said decree; nor limit

1 the amount of water in acre feet per season or other-  
2 wise that may be used for the irrigation of the lands  
3 of the parties to said decree or for other purposes;  
4 and does by its terms permit the use of waters of the  
5 Walker River 'without limit as to time, method, appli-  
6 cation or use of any beneficial character whatsoever  
7 for the irrigation of land, the watering of stock, do-  
8 mestic uses and other beneficial purposes.' The plain-  
9 tiff alleges that the use permitted and actually prac-  
10 tised by the defendants herein claiming under said de-  
11 cree, is wasteful, not beneficial, nor economical in  
12 character."

13 3. Change and amend the prayer of the said Amended  
14 Bill of Complaint in the Paragraph numbered 4 thereof, by  
15 striking out the words in the fourth and fifth lines on Page  
16 17 of the printed copy of said Amended Bill of Complaint:

17 "150 cubic feet per second of time"  
18 and substituting therefor:

19 "4 $\frac{1}{2}$  feet per acre, measured at the point of  
20 diversion from the river for each acre of land ir-  
21 rigated during the irrigation season, beginning  
22 on or about the 15th day of March and extending  
23 to and including the 15th day of September in each  
24 year; also a constant flow of not less than one second  
25 foot in each of the main canals on said reservation  
26 now constructed or hereafter to be constructed, meas-  
27 ured at a point at or near the end of each said main  
28 canal, for stock watering and domestic purposes."

29 Also to strike out wherever else appears in said  
30 Amended Bill of Complaint the words or figures:

"150 cubic feet per second of time,"  
and to substitute therefor:

"4 $\frac{1}{2}$  feet per acre, measured at the point of  
diversion from the river for each acre of land  
irrigated during the irrigation season,"

as herein alleged elsewhere.

Said motion will be made upon the ground that:

(1) As to the water requirement: The allegations  
of the amended Bill of Complaint do not properly express the  
duty or use of water necessary for the beneficial and economi-  
cal irrigation of plaintiff's lands; also upon the ground

1 that the said Amended Bill of Complaint should be amended to  
2 conform to the proof already admitted in evidence in this case  
3 in this respect.

4 (2) On the ground that the amendment made to the com-  
5 plaint, December 22, 1925 and carried into the engrossed and  
6 printed Amended Bill of Complaint filed March 19, 1926, was  
7 made inadvertently and without knowledge of the actual areas  
8 irrigated and for which water rights existed and could proper-  
9 ly be claimed by the defendants in this case, who were par-  
10 ties to the suit in which Decree #731 was entered, referred  
11 to in the affidavits; the facts being as appears from the af-  
12 fidavits referred to that approximately 60% only of the areas  
13 were actually irrigated at the time fixed in said decree and/or  
14 entitled to a water right as of that or any prior date; and on  
15 the further ground that the said facts were not brought to  
16 the attention of the solicitors for the plaintiff and their  
17 important relation to the other facts in this suit was not  
18 brought out or made apparent until a very recent time, to-wit,  
19 six weeks prior to the making of this motion; and upon  
20 the further ground in order to do justice and equity to the  
21 plaintiff and the various parties in this suit, the said pro-  
22 posed amendments should be made.

23  
24 Dated, Reno, Nevada, October 24, 1930.

25 Cole L. Harwood  
26 Solicitor for Plaintiff.

27 ETHELBERT WARD of Counsel.

28 TO: Messrs. Green & Lunsford  
29 W. H. Kearney, Esq.,  
30 A. P. Lasher, Esq.,  
Geo. L. Sanford, Esq.  
Sardis Summerfield, Esq.  
Messrs. Thatcher & Woodburn  
W. W. Watson, Esq.  
Solicitors for Defendants.

WILLIAM H. KEARNEY  
ATTORNEY AT LAW  
RENO, NEVADA

1 Filed \_\_\_\_\_, 1930 IN EQUITY

2 \_\_\_\_\_ Clerk No. C-125

3 By \_\_\_\_\_ Deputy

4 COLE L. HARWOOD  
Solicitor for the Plaintiff.

5 IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE  
6 DISTRICT OF NEVADA.  
7 -----

8 UNITED STATES OF AMERICA, )

9 Plaintiff, )

10 -vs- )

11 WALKER RIVER IRRIGATION DISTRICT, )  
12 a corporation, et al, )

13 Defendants. )

14 AFFIDAVIT OF E. W. KRONQUIST, on Motion to amend  
15 Bill of Complaint.

16 STATE AND DISTRICT OF NEVADA, )  
17 : SS.  
18 County of Washoe. )

19 E. W. KRONQUIST being duly sworn, deposes and says:

20 That he is Foreman and acts as engineer of the Walker River  
21 Indian Reservation, and is employed in the Indian Irrigation  
22 Service of the Bureau of Indian Affairs, Department of the  
23 Interior, United States.

24 That he resides at Schurz, Nevada, on the Indian Re-  
25 servation and has been employed in various capacities/ and  
26 has lived on the Walker River Indian Reservation since March  
27 5, 1919, except for a period of eight months during the year  
28 1926. During part of the time he was employed under John  
29 A. Beemer, who was engineer in charge of the Indian Irriga-  
30 tion Service on the Walker River Indian Reservation, and that

1 he, in connection with the said John A. Beemer, made recon-  
 2 noissance surveys of the entire Walker River Basin. On many  
 3 occasions he has made observations of the Walker River Basin,  
 4 and during two or three years has been engaged in making water  
 5 measurements at the head waters of the river on the East  
 6 Fork; at various points on the East Walker; and on the Main  
 7 Walker River, as well as upon the reservation, and has also  
 8 made observations and measurements upon the West Fork of the  
 9 river, and is familiar with the lands irrigated upon the  
 10 entire Walker River Basin, and capable of irrigation therein.  
 11 He is also familiar with the irrigation practice and the ir-  
 12 rigation systems throughout the entire Basin. That deponent  
 13 is a practical irrigation engineer and understands irrigation  
 14 engineering and practice generally in this region, and in  
 15 particular upon the Walker River Basin.

16 That deponent is familiar with the decree of this  
 17 court commonly known as Decree #731 entered in the case, en-  
 18 titled "Pacific Live Stock Company, a corporation, (sub-  
 19 stituted as complainant in the place and stead of Miller &  
 20 Lux, a corporation), Complainant, -vs- Thomas B. Rickey, et  
 21 al, Original Defendants, Antelope Valley Land & Cattle Com-  
 22 pany (a corporation) et al, Substituted Defendants, " so that  
 23 the title of the case when the decree was entered was:  
 24 "Pacific Livestock Company, a corporation, complainant -vs-  
 25 Antelope Land & Cattle Company, et al, Defendants." That  
 26 deponent has made a computation of the area of lands which  
 27 were given water rights under that decree. The total area  
 28 so given water rights is 83,617.35 acres. He has also made  
 29 a computation of the total flow of water in cubic feet per  
 30 second given or allotted to said lands in said decree, and

1 the total is approximately 1161.16 cubic feet per second of  
2 constant flow.

3 In 1905 a survey was made under the supervision of  
4 L. H. Taylor, then an engineer in the Bureau of Reclamation  
5 of the Department of the Interior, of the Walker River Basin  
6 covering all of the lands in the basin then irrigated, show-  
7 ing the contours of the land, the location of the streams,  
8 the ditches, fences, lands cultivated and irrigated, lands  
9 uncultivated and irrigated, crops or grasses then growing -  
10 in other words, a complete topographic survey of the Walker  
11 River Basin was made showing actual conditions as they exist-  
12 ed at that time. Deponent has made an examination of the  
13 copies of the plats of such survey which were received from  
14 the office of the Bureau of Reclamation, and has made a cal-  
15 culation of the areas of the lands which were irrigated in  
16 1905 as shown by said survey. The total area actually ir-  
17 rigated at that time, according to the calculations of de-  
18 ponent, based upon the said plats of survey and covering  
19 the same lands to which rights were ascribed or adjudicated  
20 in said decree #731, is 50,138 acres.

21 Decree #731 fixes the rights of all parties as of the  
22 year 1905. It does not cover all of the lands in the Walker  
23 River Basin that were then irrigated, for the reason that not  
24 all of the land-owners in California were parties to the suit.  
25 These lands not included in Decree #731 were principally in  
26 Bridgeport Meadows on the East Walker River, and its head  
27 waters, and the remainder were on the West Walker River in  
28 the upper part of Antelope Valley, and a few hundred acres  
29 in Leavitt Meadows. The calculations made by deponent were  
30 made upon the same basis as the decree, that is to say, only



1 the lands that were covered by Decree #731 were taken into  
2 account in making deponent's calculations. In making these  
3 calculations deponent partly estimated them by observation  
4 and simple measurements, and partly, and mostly in fact, by  
5 the use of a planimeter with which he carefully and accurate-  
6 ly followed the outlines of the irrigated lands. Deponent  
7 believes that the result arrived at in his calculations, to-  
8 wit, 50,138 acres, is in excess of the actual area irrigated  
9 in 1905 as shown by said plats of survey.

10 Deponent, as above stated, is familiar with the en-  
11 tire Walker River Basin, and with the lands now irrigated  
12 therein. Some of the lands formerly irrigated, particular-  
13 ly in the lower part of Mason Valley, are not now irrigated  
14 and have not been irrigated for several years last past.  
15 Some lands that were not irrigated or shown as irrigated by  
16 the said plats of survey made in 1905, have since been irri-  
17 gated, and according to deponents's best information and be-  
18 lief, the aggregate increase of irrigated area since 1905  
19 will not exceed 10%, or approximately 5000 acres. These  
20 figures take into account the whole basin and relate to lands  
21 claimed by the defendants.

22 That deponent did not see or have occasion to examine  
23 the said plats of survey until sometime in the latter part of  
24 August, 1930.

25 That in deponent's opinion the defendants in this  
26 case should be required to show the actual areas of the lands  
27 claimed by them to be entitled to water rights, both as among  
28 themselves and as against plaintiff in this case, and the  
29 several priorities that their lands should have. Since  
30 1905 two large reservoirs have been constructed by the Walker

WILLIAM H. KEARNEY  
ATTORNEY AT LAW  
RENO, NEVADA

1 River Irrigation District, one of the defendants. One of  
 2 these reservoirs is upon the East Walker River and Bridgeport  
 3 Valley, and the other on the West Walker River and Antelope  
 4 Valley. The Walker River Irrigation District covers prac-  
 5 tically all of the lands of the defendants in Nevada. Some  
 6 of the defendants have also enlarged or attempted to enlarge  
 7 the storage capacity of Twin Lakes in Mono County, California.  
 8 The Sierra Pacific Power Company is claiming the right to  
 9 construct a reservoir in Leavitt Meadows; the Walker River  
 10 Irrigation District is also claiming the right to build ad-  
 11 ditional reservoirs; the plaintiff in this case may also  
 12 build a reservoir on the reservation. All of these things  
 13 greatly complicate the situation from a practical standpoint.  
 14 All of the defendants having lands in Nevada have rights in  
 15 the reservoirs of the Walker River Irrigations District, so  
 16 that the situation is changed materially from that existing  
 17 in 1905 or in 1919 when Decree #731 was actually entered.

18 A water master must necessarily be appointed to have  
 19 charge of the entire Walker River Basin, and in the opinion  
 20 of deponent it will be unjust, both to the plaintiff and to  
 21 the defendants, to permit a decree to be entered in this case  
 22 based upon the adjudication made in Decree #731. Rights to  
 23 water are being claimed, and in some cases enforced by the  
 24 defendants in that case which are not based upon actual facts  
 25 as they existed in 1905 or 1919 or at any time since, and if  
 26 legal rights actually were established by Decree #731 among  
 27 the parties to that suit, they have been lost either by  
 28 abandonment or non-use and do not at the present time exist.  
 29 This is shown by the great discrepancies between the area  
 30 covered by said Decree #731 and the areas actually irrigated  
 at the time ascribed to those areas by said decree and by

1 present conditions. Deponent therefore believes that the  
2 concession made to the defendants in the Amended Bill of Com-  
3 plaint, which he is informed was made on December 22, 1925,  
4 should be withdrawn, and the defendants required to prove  
5 their rights as they exist.

6 E. W. Kronquist

7 Subscribed and sworn to before me  
8 this 22d day of October, 1930.

9 Catherine M. Elsinney  
Notary Public

10 (SEAL)

IN THE DISTRICT COURT OF THE UNITED STATES, IN AND FOR THE  
DISTRICT OF NEVADA.

WALKER RIVER IRRIGATION DISTRICT,  
a corporation, et al,  
  
Defendants.

STATE AND DISTRICT OF NEVADA, )  
County of Washoe. ) SS.

GEORGE SPRINGMEYER being duly sworn deposes and says:  
That he was formerly United States Attorney for the District of Nevada, and as such acted as solicitor for the United States in this suit from the time of its commencement until his term of office expired in 1926.

With reference to the amendment to the complaint which was prepared and filed by deponent December 22, 1925, and which was carried into the printed bill which was filed March 19, 1926, the facts regarding the said amendment were that there had been conferences and negotiations regarding a stipulation between the parties for the purpose of shortening the trial of the case. These conferences and the proposed stipu-

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1 lation between the parties for the purpose of shortening the  
2 trial of the case. These conferences and the proposed stipu-  
3 lation had failed because of disagreements, partly among the  
4 defendants themselves, and partly between the plaintiff and de-  
5 fendants, but deponent was anxious nevertheless to shorten  
6 the trial with the expectation that the defendants would make  
7 concessions to the plaintiff as the trial progressed. It  
8 was therefore determined by deponent to concede to the defend-  
9 ants who were parties to Decree #731 the rights adjudged to  
10 the defendants in the action in this Court entitled: "Pacific  
11 Livestock Company, a corporation, complainant -vs- T. B.  
12 Rickey, et al, defendants," reserving to the United States  
13 however, its own rights and priority.

14 It was never called to deponent's attention that a  
15 survey had been made of the irrigated area in the Walker River  
16 Basin by and under the direction of the Bureau of Reclamation  
17 of the United States. Deponent took it for granted that the  
18 acreages established by Decree #731 were accurate, and were  
19 based upon actual proof, and deponent was not inclined to  
20 question the duty of water or other provisions of the decree,  
21 although the decree was not binding upon the United States,  
22 because the United States was not a party to it. He was  
23 not aware that the decree was in effect a consent decree in  
24 which the parties stipulated among themselves their respective  
25 claims of priority and acreage of lands irrigated, and he was  
26 not aware that the actual acreage irrigated in 1905, and/or  
27 entitled to water rights at that time, was very much less  
28 than was fixed by said Decree #731 - in fact about 60% of the  
29 acreage fixed by said decree. If deponent had been aware of  
30 the actual condition of affairs as shown by the survey made

1 by the Bureau of Reclamation, or otherwise ascertained and/or  
2 brought to his knowledge, the complaint would not have been  
3 amended in the respect above indicated, to-wit, by the amend-  
4 ment of December 22, 1925, and the concessions to the defend-  
5 ants in effect made by said amendment, would not have been  
6 made.

7 GEORGE SPRINGMEYER

8  
9 Subscribed and sworn to before me  
10 this 23rd day of October, 1930.

11 J. N. Quinn  
12 Notary Public  
13 In and for the County of Washoe,  
14 State of Nevada.

15  
16 My Commission expires April 5, 1932.

17 (SEAL)  
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